where the public officer is without compensation and derives no benefit from the acts of the negligent agent, is against the immediate wrong-doer. *Jones v. Bird*, 5 B. and Ald. 837. Of course the public or administrative character of a person or body affords no immunity against the consequences of its own negligence. *Story, Agency*, §320. And it was with this doctrine in mind that the Court of Appeals decided the present case holding the Board of Education liable. The plaintiff, a pupil in the public schools, had been injured by the falling of the ceiling in the school-room while he was occupying the seat assigned him. The holding points out that it was the duty of the "trustees" or other officers to repair this ceiling and that "the board" is in no way chargeable for the negligence of the "trustees" but that it is liable for its own negligence in this case for failing to close the room until the repairs should have been made.

TRADE NAMES.

The doctrine of unfair trade, which has of late years been so greatly developed, and its application or lack of application to a copyright, were lately discussed in the case of *Ogilvie v. G. & C. Merriam Co.*, 148 Fed. Rep. 858. There it was decided that the G. & C. Merriam Co. at the expiration of their copyright did not have a right to the exclusive use of the name "Webster" in the title of dictionaries of the English language and that the printing of the publisher's name (George W. Ogilvie) on the back or cover and title page was enough to distinguish the dictionaries published by him from those of the original publishers (G. & C. Merriam Co.) who had been owners of the copyright during its life.

The contention was that, in as much as the G. & C. Merriam Co. had had a copyright, and, that during the running of that copyright, had established a reputation for "Webster's" dictionaries, which were published only by said company, they should be protected in the reputation thus acquired by having the sole right to the use of the word "Webster" in that connection, even after the expiration of the copyright. This claim Colt, Circuit Judge, disposed of by saying that to give the public "the right to publish the book, and not the incidental right to use the name by which it is known, is in effect to destroy the public right, and to perpetuate the monopoly." This is but in accord with the opinion of Mr. Justice Miller in *Merriam v. Holloway Pub. Co.*, 43 Fed. Rep. 450, when he says, in effect, that a man has no right to continue his monopoly under the pretence that it is protected by a trade-mark, trade-name, or anything of that sort.

Indeed, the present case cannot be differentiated from the patent cases, such as the *Singer Manufacturing Co. v. June Manufacturing Co.*, 163 U. S. 169, and *Fairbanks v. Jacobus*, 14 Blatchford 337. The doctrine laid down, in such cases, is, that, on the expiration of a patent the right to make the patented article and to use the generic name passed to the public with the dedication resulting from the expiration of the patent.

In *Linoleum Mfg. Co. v. Maine*, 7 Ch. Div. 834, the same doctrine was applied but Fry, J., said (p. 837):

"If I found they were attempting to use that name (Linoleum) in connection with other parts of the trade-mark, so as to make it appear that the oxidized oil made by the defendants was made by the plaintiffs, of course the case would be entirely different."

As early as 1783, there are dicta regarding the doctrine of unfair trade, though that term was then unknown. In the case of *Singleton v. Bolton*, 3 Douglas 293, decided in that year, it was said that if a defendant sold an article of his own under the plaintiff's name and mark, that would be fraud for which an action would lie. And, later in 1824, this principle was restated with the qualification that the goods so marked must be sold as those manufactured by the plaintiff, to give him a right of action. *Sykes v. Sykes*, 5 D. & R. 292.

From that time to the present day the doctrine of unfair competition, though in various disguises, has been the object of ever increasing application until, at this time, it occupies a prominent place in the law. Stated in brief, and in its most comprehensive form, it is that no man has a right to pass off his goods upon the public as and for the goods of another, and thereby work a fraud upon both the public and his rival in trade. This principle is broader than the rules applicable to strict, technical trade-marks, but it is not something separate and apart from trade-mark law. Rather it may be said, it lies at the very foundation of trade-mark law, and covers besides a large field to which some of the technical trade-mark rules do not extend.

Independently of the existence of any technical trade-marks, no manufacturer or vendor will be permitted to so dress up his goods, by the use of names, marks, letters, labels or wrappers, or by the adoption of any style, form or color of packages, or by the combination of any or all of these indicia, as to cause purchasers to be deceived into buying his goods as and for the goods of another. *McLean v. Fleming*, 96 U. S. 245; *Lawrence Manufacturing Co. v. Tennessee Manufacturing Co.*, 138 U. S. 537.

So in the case of *Genesee Salt Co v. Burnap*, 20 C. C. A. 27, it was held that a manufacturer of salt in the Genesee valley will not be enjoined from using the word Genesee in connection therewith, but he will be restrained from using it in any color, style or form of letters, or in combination with other words, so as to imitate a combination previously used by another maker of salt in the same locality.

So Mr. Justice Brown in *Coats v. Merrick Thread Co.* 149 U. S. 562, says that irrespective of any question of trade-marks, "rival manufacturers have no right, by imitative devices, to beguile the public into buying their wares under the impression that they are buying those of their rivals."

In the case in question the above principles were fully recognized and the court held that Ogilvie had done all that the law required to distinguish his dictionaries from those of the Merriams.

Naturally, it is a question of fact in each particular case, whether or not one manufacturer has or has not distinguished his goods from those of a rival manufacturer, where the same name is used describing both. The great trend of recent decisions is emphatically to broaden the doctrine of unfair competition and protect those injured. But, where the goods are distinguished, in one way or another, in such manner as the court thinks proper and fair, it will not interfere though the complainant is somewhat injured.